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No. 94-247

In the Supreme Court of the United States

OCTOBER TERM, 1994

RALPH SCOPO, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing an order suppressing evidence obtained following the stop of his car for a traffic violation.

1. On February 11, 1992, petitioner was indicted by a federal grand jury sitting in the Eastern District of New York. He was charged with possession of a firearm that had the manufacturer's serial number removed, obliterated, or altered, in violation of 18 U.S.C. 922(k) (1988 & Supp. IV 1992).

After stopping petitioner's car for a traffic violation—changing lanes without signaling—the police discovered and seized a fully loaded .38-caliber pistol from the back seat of petitioner's car. Prior to his trial for illegal possession of the pistol, petitioner moved to suppress the

gun as well as certain statements petitioner made to the police following the traffic stop.

The district court suppressed both the firearm and the statements. The court found that the minor traffic violation did not justify the stop of the car, because the police had no reasonable suspicion that petitioner was engaged in criminal activity; the court concluded that the arrest was a pretext for searching petitioner's car for weapons. Pet. App. 7a.

2. The court of appeals reversed. Pet. App. 1a-20a. The court held "that where the arresting officer had probable cause to believe that a traffic violation occurred or was occurring in the officer's presence, and was authorized by state or municipal law to effect a custodial arrest for the particular offense, the resulting arrest will not violate the fourth amendment." *Id.* at 15a. That was the proper test to employ, the court concluded, because it rested upon an objective assessment of the officer's actions, and not his state of mind.

3. Petitioner contends (Pet. 15-34) that the police used the minor traffic violation as a pretext to stop him, to arrest him, and to search his car, based on a hunch that he was engaged in other more serious criminal activity. Petitioner argues that, under the proper analysis, if the traffic stop normally would not be made, the resulting evidence should be suppressed.

Whatever the merits of petitioner's argument, it is not ripe for review by the Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, the contention he raises now will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contention to this Court,

together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
Solicitor General

AUGUST 1994

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* Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.